

**STATEMENT OF STEPHEN J. WRIGHT, ADMINISTRATOR
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**BEFORE THE
UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS
ON THE IMPACTS ON TRIBAL FISH AND WILDLIFE
MANAGEMENT PROGRAMS IN THE PACIFIC NORTHWEST**

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Testimony of Steve Wright
Senate Indian Affairs Committee Hearing on
The Impacts on Tribal Fish and Wildlife Management Programs
In the Pacific Northwest
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Mr. Chairman, and Members of the Committee. My name is Steve Wright. I am the Administrator of the Bonneville Power Administration (BPA). It is a pleasure to appear before you today to discuss the impacts on tribal fish and wildlife management in the Pacific Northwest.

BPA is a federal agency, under the U.S. Department of Energy, that markets wholesale electrical power and operates and markets transmission services in the Pacific Northwest. The power comes primarily from 31 hydro projects and one nonfederal nuclear plant. About 45 percent of the electric power used in the Northwest comes from BPA. BPA's transmission system accounts for about three-quarters of the region's high voltage grid.

BPA is a self-funding agency, paid for through power and transmission sales. As required by Federal statute, both power and transmission are sold at cost and BPA repays any borrowing from the U.S. Treasury with interest.

BPA's revenues can fluctuate widely with water and power market conditions. Ninety percent of our resources are hydropower, and snowpack and spring runoff each year are highly variable. Since electricity deregulation, the volatility of market prices for power has also contributed to the unpredictability of BPA's revenues. Despite these fluctuations and other financial challenges, BPA has consistently met our fish and wildlife obligations.

The revenues BPA earns help it to fulfill public responsibilities that include low-cost and reliable power and investments in energy conservation and renewable resources. One of BPA's responsibilities is to fund the region's efforts to protect and recover fish and wildlife populations affected by hydro development in the Columbia River Basin. This work has provided the foundation for an invaluable partnership with Pacific Northwest Tribes that has spanned over two decades. I want to assure you that BPA is fully committed to continuing this important relationship.

At an annual estimated cost exceeding \$600 million (including about \$175 million in annual direct program support, about \$58 million in BPA funding of reimbursable power expenditures by other federal agencies and funding of the Power Council, about \$90 million in BPA expenses to repay prior capital investments and about \$303 million for power system modifications and purchases of replacement energy), BPA believes its effort to preserve salmon and other fish and wildlife species is among the largest and most notable environmental mitigation programs in the nation. According to the Northwest Power Planning Council (Council), BPA has spent more than \$6 billion on fish and wildlife recovery since 1978. Almost 1000 average megawatts (aMW) of the

Federal Columbia River Power System's (FCRPS) roughly 9000 aMW capability is dedicated to fish operations, leaving about 8,000 aMW capability to be marketed.

What is of primary importance, though, is that we are focused on – and we are achieving – real results. Today I would like to start off my testimony by discussing the results and the progress BPA has made to date in fish and wildlife and our performance-based approach. Next, I'll talk about our legal obligations to fish and wildlife and how we implement them. I will highlight some of the many accomplishments that we have achieved in collaboration with tribal resource program managers. Finally, I will talk about BPA's efforts to provide budget certainty and stability – independent of our current financial difficulties and the continual unpredictability of our revenues.

Fish and Wildlife Recovery Progress to Date

Despite drought conditions in 2001, dry conditions at the start of this year, and BPA's poor financial circumstances, the Northwest Region of the National Oceanic and Atmospheric Administration ("NOAA Fisheries") recently verified that we are fully implementing over 95 percent of the measures called for in NOAA Fisheries' 2000 Biological Opinion (BiOp). These Endangered Species Act (ESA) actions are also helping to fulfill our responsibilities under the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) to protect and enhance fish and wildlife affected by the FCRPS.

As underscored by NOAA Fisheries, the steps BPA has taken over the last decade have significantly improved juvenile fish survival through the federal hydro system. Today, according to NOAA Fisheries data, young fish survive their trip downriver at roughly the same rates as the 1960s, when fewer dams were in place.

These improved survival rates through the dams and reservoirs are not the only gauge of performance. We are also seeing rebounds in the numbers of returning adult fish throughout the Columbia River Basin. For example, in 2001, the upriver Spring Chinook salmon return of 405,500 fish, counted by the Washington Department of Fish Wildlife at Bonneville Dam, was the largest return on record (since 1938). A total of 172,000 fish were counted by the Washington Department of Fish and Wildlife as having made it past Lower Granite Dam on the Snake River. For the first time in many years there were enough surplus fish to allow full-scale commercial fisheries on this stock. Returns for other stocks have seen similar results. Upriver steelhead saw record returns of nearly 640,000 salmon. Generally good to excellent returns and spawning have continued for most stocks in 2002 and so far in 2003.

Some of this recent good news is attributable to favorable ocean conditions, which are cyclic. However, we believe that it also reflects the combined benefits of our efforts to improve juvenile fish survival, habitat, hatchery management, and harvest control. We see these strong returns as indicators that we are on the right long-term path with our salmon recovery program.

That long-term path emphasizes performance rather than budgets. Earlier efforts, rather than targeting and measuring biological performance, merely specified actions. Starting with the NOAA Fisheries' and the U.S. Fish & Wildlife Services' (FWS) 2000 Biological Opinions (BiOps) we have instituted a performance-based, least-cost approach. The transition to performance standards as the measure of fish enhancement has been difficult at times. BPA has taken a leadership role in showing that it is not how much money we spend that is the gauge of our success – rather, the appropriate measure of performance is the results we have to show. In the words of the Northwest Power Act [Section 4(h)(6)(C)], the Council's Fish and Wildlife Program seeks to “utilize, where equally effective alternative means of achieving the same sound biological objective exist, the alternative with the minimum economic cost . . .” Under this approach, we are using a biological yardstick, while still keeping our eye on costs.

Implementation of BPA's Fish and Wildlife Responsibilities

As a foundation for discussing BPA's approach to project funding, I would like to first talk about our legal obligations.

The Northwest Power Act: Section 4(h)(10)(A) of the Northwest Power Act is the cornerstone of BPA's fish and wildlife responsibilities under this law. It provides that BPA shall protect, mitigate and enhance fish and wildlife to the extent affected by the development and operation of the FCRPS in a manner consistent with the Council's Fish and Wildlife Program and the purposes of the Act.

BPA mitigation under the Act must also be consistent with the other purposes of the Act, such as the purpose to “. . . assure the Pacific Northwest of an adequate, efficient, economical and reliable power supply. . .” while keeping rates to consumers as low as possible “. . . consistent with sound business principles.”

The Northwest Power Act includes a duty for Federal agencies that manage, operate, or regulate hydroelectric facilities in the Basin to provide “equitable treatment” for fish and wildlife with the other purposes for which the hydro facilities are managed and operated. BPA's Record of Decision implementing BPA's portion of the 1995 NMFS Biological Opinion for FCRPS operations put fish second only to flood control (and above those for power generation, with limited exceptions during emergency situations) in the priority of how the dams are to be operated.

Finally, Section 4(h)(11)(B) calls upon the Administrator to consult with federal, state, and tribal fish managers in carrying out the provisions of the Act.

Endangered Species Act: ESA essentially requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of listed species or their habitat. It also proscribes take of listed species, unless such take is consistent with an incidental take statement or permit issued by NOAA Fisheries or the US Fish and Wildlife Service (FWS), or is otherwise exempt from take.

According to regulations issued by NOAA and FWS, “jeopardize” means “to reduce appreciably the likelihood of both the survival and recovery” of listed species. The 2000 Biological Opinions of NOAA Fisheries and FWS advised the managers of the Federal Columbia River Power System (FCRPS) how to avoid jeopardy. BPA documented its decision to implement the biological opinions in one- and five-year implementation plans and possibly subsequent consultations. The decision document also responded to the essential fish habitat conservation recommendations by NOAA Fisheries. It also recorded BPA’s intent to implement the biological opinions consistent with treaties, executive orders, and other Federal laws recognizing Native American Indian Tribes and the federal government’s trust and treaty responsibilities to Tribes.

BPA’s Trust Responsibility: As a government-entity BPA shares a recognition of an undisputed existence of a general trust relationship between the United States and the Tribes. Agencies and tribes implement this trust relationship in accordance with the requirements that Congress and the Executive Branch give to agencies through statutes or executive orders. For BPA, the applicable statutes include the Northwest Power Act, ESA, National Historic Preservation Act, and the National Environmental Policy Act (NEPA).

The 1855 Stevens-Palmer treaties with Basin tribes are especially important sources of authority upon which the trust responsibility is based. With these treaties the tribes reserved the right to fish for up to half the harvestable surplus of salmon and steelhead at usual and accustomed fishing sites. The treaties also established the basis for the tribes being co-managers along with state and federal resource management agencies.

Project Selection Process: BPA endorses and implements a regionally developed, collaborative and unified approach for project selection and funding that fully integrates Council Program measures with those of the FCRPS BiOps, in a manner that is scientifically and financially credible and robust.

BPA’s obligations under the Northwest Power Act and the ESA overlap extensively. (See attached, Chart 1.) The Council has found that “[a]lthough Bonneville has fish and wildlife responsibilities under both the [ESA] and the Northwest Power Act, in many cases, both responsibilities can be met in the same set of actions.” The Council’s Provincial Review Process provides a mechanism for integrating activities under the existing Fish and Wildlife Program with the measures focusing on the needs of ESA-listed fish stocks identified in the BiOps. BPA is also relying on the Council’s sub-basin planning initiative to further integrate the needs identified through recovery planning and implementation of the FCRPS biological opinions with those of the Council’s Fish and Wildlife Program. We refer to this combined effort as the Integrated Program.

BPA anticipates that requests for project implementation funding in support of the Integrated Program will continue to exceed the level of available program funds. Because of this, BPA reviews and prioritizes projects – including those that implement ESA requirements – in partnership with the Council and the region’s tribal, state, and

federal fish and wildlife managers. We focus funding on those projects that provide the greatest biological benefit at the lowest cost. The tribes are involved throughout.

Chart 2 (attached) outlines the Council's Provincial Review Process. It starts with a joint BPA/Council Request for Proposals for fish and wildlife protection, mitigation, and recovery. After the proposals are received, the Columbia Basin Fish and Wildlife Authority (CBFWA), an organization of state and tribal fish and wildlife managers reviews and prioritizes the projects for technical and management merit. Then, an Independent Scientific Review Panel (ISRP) authorized by the Northwest Power Act reviews the proposals and recommends those that meet scientific and biological objectives for the program. The Council reviews the list and makes its recommendations to BPA for funding.

BPA reviews the final Council list and sends its decision letter to the Council identifying the list of projects that it will fund. Through careful work with the Council over the years, we have reached the point where there is significant alignment on the projects the Council recommends and those that BPA ultimately decides to fund in each of the geographic Provinces.

Tribal Partnerships and Programs

Chart 3 (attached) shows how, from 1978 through 2003, BPA provided generally increasing funding for a nearly \$1.5 billion program of support the implementation of fish and wildlife projects by Federal, state and Tribal governments and others. Of that amount, nearly \$426 million supported the implementation of fish and wildlife projects by Tribal government with \$219 million, or 51 percent of total funding during the four-year period from 2000 through 2003.

Following are some of the highlights of recent fish and wildlife projects funded by BPA and operated by the Tribes:

- In the Albeni Falls area, the Kalispel Tribe, the Coeur d'Alene Tribe, and the Kootenai Tribe of Idaho have worked with federal, state and non-profit agencies to provide protection for approximately 5,987 acres of wildlife habitat, representing approximately 15 percent of the total wildlife habitat lost to the Albeni Falls project. To date, BPA has funded about \$10 million in land purchases and mitigation.
- The Cle Elum Supplementation and Research Facility began operations in 1997 under the co-management of the Yakima Nation and the State of Washington. BPA invested \$37 million in construction of the facility, and funds operations and maintenance at a level of \$2.5 million per year. The facility was built to enhance production of spring Chinook and re-introduce stocks formerly present in the Yakima basin. Since then, the spring Chinook return jumped from 2,500 per year to greater than 15,000 per year since 2000, with over 23,000 spring Chinook estimated to have returned in 2001.

- The Nez Perce Tribal Hatchery, dedicated in 2002, is designed to help restore naturally reproducing populations of spring and fall Chinook salmon in the Clearwater River basin. The hatchery will help preserve the genetic integrity of these fish populations and in the long term, establish harvest opportunities for Tribal and non-Tribal anglers. Several innovative rearing techniques are used to encourage the hatchery-reared fish to behave like wild fish.

BPA's historic support of tribal programs in support of our ESA and Northwest Power Act requirements reflects the agency's recognition and endorsement of the unique status of tribes in the region as sovereign governments, and of their crucial role as managers of the natural and cultural resources on reservation lands, in the ceded areas, and at usual and accustomed sites. The expertise and experience of tribal program and policy staff, and the insight of elected leaders and tribal elders, have greatly improved the content of program measures and enhanced the quality and level of performance of the region's fish and wildlife mitigation projects.

In many respects, too, BPA's mitigation investments have helped build the capacity within tribal communities to engage in meaningful mitigation initiatives. Through contracting with tribes, BPA investments have strengthened tribal resource programs, provided employment opportunities for tribal members and others and expanded the economic base of reservation communities – while improved fish runs have provided greater harvest opportunities. Through the Council processes, the tribes have been provided means to voice their concerns about federal fish and wildlife management in the Columbia River Basin. Oversight forums such as the Fish Passage Center give tribes another voice in hydro system operations.

Budget Stability for the Fish and Wildlife Program

The Effect of the West Coast Energy Crisis: Beginning with the West Coast energy crisis in 2000-2001, BPA has been managing through a very difficult financial situation. When the West Coast encountered a power shortage, historic sources of power from California and Canada were unavailable, market prices for electricity soared to unprecedented levels, and the Northwest was hit with severe drought, the hydro system was stretched beyond its limits. BPA declared a power system emergency, as provided for under the NOAA Fisheries' 2000 BiOp, reducing hydro system mitigation activities in order to preserve electric system reliability.

BPA developed a policy to offset adverse impacts to fish that may have otherwise resulted, and we did not reduce our expenditures to implement the Council's Fish and Wildlife Program. Our efforts included load reductions through buy-downs, saving 500,000 acre-feet of water in-stream through irrigation programs, achieving region-wide energy conservation measures, funding a greater catch of northern pike minnow to reduce predation, and funding 20 additional habitat projects aimed at helping fish affected by the

power emergency. At the same time, we met our obligations to provide electric energy to customers, but to do so we were forced to incur over \$1.5 billion in costs for 2001 fish operations-about \$115 million in foregone revenues and the balance in replacement power costs.

The combination of BPA's efforts to acquire power and reduce load and the types of mitigation we implemented enabled the Pacific Northwest to avoid blackouts and escape many of the problems that befell California—while still maintaining substantial fish and wildlife benefits. I believe this is exactly the balance the Northwest Power Act asked of BPA when it included, on the one hand, protecting, mitigating, and enhancing fish and wildlife, and providing them with equitable treatment, while on the other hand providing the Pacific Northwest with an adequate, efficient, economic, and reliable power supply.

BPA's Financial Difficulties: The West Coast energy crisis took its toll on BPA's financial situation, though. Since then, we have had to raise our wholesale power rates by 46 percent. We have depleted our financial reserves to dangerously low levels.

In February 2003, BPA proposed another 15 percent rate increase. Before we proposed the rate increase, we made cost cuts and deferrals totaling \$350 million for the remainder of the FY2002 – FY2006 wholesale power rate period. We recently cut another \$35 million from the cost estimates used to develop our initial rate proposal. We continue to work hard with our cost partners – the U.S. Army Corps, Bureau of Reclamation, Energy Northwest, and the fish agencies – to get this increase down to a lower number. With the difficulty the Northwest economy is currently experiencing, we are hearing that the region cannot absorb another rate increase.

Impact on the Integrated Program: While BPA has worked hard to bring its internal costs that must be recovered in power rates back to 2001 levels, we did not propose a similar reduction in funding for the Integrated Program. In fact, we reaffirmed our previous commitment to an increase in direct program support of almost 40 percent over the previous rate period (See attached, Chart 4). The program is composed of \$139 million in expense funding and \$36 million in capital funding, but the primary focus has been on expense funding. However, we are closely monitoring total fish and wildlife program expenditures in order to assure the pace of implementation spending remains within the level of BPA's program funding commitments. We believe that we must hold the line on fish and wildlife spending for FY 2003 at \$139 million in expense.

In December 2002, BPA asked that the Council – in consultation with the region's fish and wildlife managers – take the lead to ensure that expensed spending for the Integrated Program did not exceed \$139 million in FY 2003. In addition, we asked the Council to re-order priorities to create the opportunity to spend less than \$139 million annually in expense for the remainder of the current wholesale power rate period which, covers FY 2002 through FY 2006. We have made considerable progress in developing the tools necessary to more carefully manage program finances within the limits of a \$139 million yearly expense budget. We continue to make every effort in this prioritization process

with the Council to maintain our ability to initiate new work in the near-term without compromising our existing long-term investments.

We are proceeding to work with the Council on implementing this approach, consistent with our statutory responsibilities, for FY 2003 and the remainder of the rate period. All of our actions have been consistent with the Council's recommendations. BPA has not terminated, breached, or abrogated any contracts for fish and wildlife implementation – with the Tribes or any other parties – in this process. Where appropriate, we have modified the pace of the work under some contracts and sponsors have reduced their costs – for travel, training, incidental materials and similar line items.

Among other things, the Council recommended that BPA change its policy with regard to expensing habitat acquisitions. We've been asked to capitalize land acquisitions for fish and wildlife habitat, rather than continue to treat these costs as a yearly expense. The Council recommended that all land acquisition projects scheduled for implementation in FY 2003 be placed on hold pending discussions on BPA's capitalization policy for FY 2004. Capitalizing land acquisitions represents a significant change from our current policy and financial practices and BPA has limited access to borrowing authority/capital. BPA is working with the Council's wildlife subcommittee and others to address our concerns about capitalization of land acquisitions and to help resolve this issue.

Goals for the Integrated Program: BPA has a responsibility to ratepayers to ensure that funds spent for fish and wildlife are used cost effectively to achieve measurable and biologically effective results. To that end, we are working to establish contract management tools that deliver biological and financial accountability. Together with contractors and contract sponsors, we are embarking on a contract improvement process that will take some time to complete. Our goal is to implement performance based contracts that:

1. Simplify current contracting processes for both contractors and BPA;
2. Implement standard business practices to promote consistent program implementation by BPA project managers;
3. Provide clear accountability for achieving measurable, performance-based biological results on the ground to support implementation of the NOAA Fisheries' and FWS's BiOps and the Council's Fish and Wildlife Program; and
4. Provide BPA managers with accurate and current information to facilitate management of BPA's fish and wildlife funds on an accrual basis.

Looking toward the next wholesale power rate period, BPA intends work with the tribes and other regional parties to develop a long-term agreement on fish and wildlife program issues. BPA believes such a discussion would be appropriate in the context of the current regional dialogue regarding BPA power service post-2006. With the establishment of performance standards and related tools, we have made tremendous progress defining the

biological requirements under the BiOps. To develop a successful long-term agreement for the fish and wildlife program, we must establish similar standards and tools that define our biological requirements under the Northwest Power Act.

We understand that parties in the region want budget stability. The challenge is how to provide that stability given the volatility of hydro conditions, market conditions, and BPA revenues.

Conclusion

The path we have set will strengthen BPA's performance and preserve our ability to meet all of BPA's responsibilities, as well as our commitments to tribal partnerships, programs, and trust and treaty obligations. In recent meetings with Columbia River Basin tribal leaders and representatives, I have reaffirmed our BPA Tribal Policy regarding government-to-government consultation with the Northwest Tribes. It is through both formal and informal consultation that I expect we will work through these issues – fairly, openly, and deliberately.

BPA ratepayers are funding a fish and wildlife program that is one of the most significant in the country. The amount of that investment is far greater than any other agency in the Northwest makes in tribal resource programs or in fish and wildlife mitigation and recovery. Yet the test of performance is results. It is certainly encouraging that we are seeing record returns of adult salmon and that juvenile survival through the dams is as good as it was before the four lower Snake River dams were in place. We must continue to seek those results in the most cost-effective way possible, and in a way that meets all of our statutory mandates.

Mr. Chairman, I thank you for the opportunity to testify and would be pleased to answer your questions.